

STATE OF MICHIGAN
IN THE SUPREME COURT

BRIAN PERRY,
Plaintiff-Appellee,

vs.

Supreme Court No. _____

GOLLING CHRYSLER
PLYMOUTH JEEP, INC.
a Michigan Corporation,
Defendant, Appellant,

Court of Appeals No. 25412 I
Lower Court No. 03-053489-NI

**PLAINTIFF-APPELLEE'S BRIEF IN OPPOSITION TO
DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

PROOF OF SERVICE

Respectfully Submitted,

BARNETT & TRAVER, P.C.

LARRY BARNETT (P23734)
SCOTT R. TRAVER (P53842)
Attorney for Plaintiff-Appellee
3520 Pontiac Lake Road
Waterford, MI 48328
248/673-1099

FILED

DEC 12 2005

CORBIN R. DAVIS
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MICHIGAN SUPREME COURT

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BARNETT & TRAVER, P.C., ATTORNEYS AT LAW, 3520 PONTIAC LAKE ROAD, WATERFORD, MICHIGAN 48328, (248) 673-1099

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. DID THE SIGNING OF THE DOCUMENTS AT DEFENDANT'S DEALERSHIP SIGNIFY TRANSFER OF TITLE/OWNERSHIP FROM DEFENDANT TO THE DRIVER OF THE VEHICLE INVOLVED IN THE SUBJECT ACCIDENT?

Plaintiff answers, "No."

Defendant answers, "Yes."

Trial Court answered, "Yes."

The Court of Appeals answered, "No."

- II. DID PLAINTIFF'S RELEASE OF THE DRIVER OF THE SUBJECT VEHICLE ALSO RELEASE DEFENDANT?

Plaintiff answers, "No."

Defendant answers, "Yes."

Trial Court answered, "No."

The Court of Appeals answered, "No."

COUNTER-STATEMENT OF FACTS

This lawsuit arises out of a motor vehicle accident that occurred on October 20, 2000 in which Plaintiff suffered serious injuries. Plaintiff alleges that Defendant owned the 2000 Plymouth Neon involved in the accident, which was being driven by Ksenia Nichols.

In Defendant's Statement of Facts, Defendant asserts that Ms. Nichols drove the Neon 'into Plaintiff's parked vehicle', referring the Court to paragraphs 12-15 of Plaintiff's Complaint. However, Plaintiff's Complaint actually alleges that Ms. Nichols was driving at a high rate of speed, suddenly stopped and Plaintiff attempted to exit the Neon. Just as Plaintiff exited the Neon, Ms. Nichols accelerated quickly, knocking Plaintiff to the pavement (see Complaint, **Exhibit #1, ¶ 8**).

On October 19, 2000 Ms. Nichols went to Defendant's dealership to look at and possibly purchase a vehicle. While there, Ms. Nichols decided to buy a used 2000 Plymouth Neon and began the process of purchasing this vehicle. This process included filling out and signing numerous documents.

One such document which Ms. Nichols purportedly signed, on October 19, 2000, is an Application for Michigan Title-Statement of Vehicle Sale (form RD-108) (**Exhibit #2**). The Application shows that the Security Interest was recorded eleven days later on October 30, 2000.

The Application also shows that Americredit Financial Services, who financed the vehicle, filed its secured interest on October 19, 2000. Other paperwork processed by Defendant, however, indicates that financing wasn't even approved until October 20, 2000., which suggests that Americredit filed its security interest before it approved Ms. Nichols loan.

Second, a review of the title endorsed for this vehicle shows that the Secretary of State issued the ownership of this vehicle to Ms. Nichols on October 31, 2000, approximately eleven

days *after* the accident (See **Exhibit #3**).

Additionally, **Exhibit #3** shows that the filing date for Americredit identified on the title is October 30, 2000, a clear indication that the date identified on the Application for Michigan Title is incorrect.

The back of the Certificate of Title shows that the original title that Defendant retained while awaiting a new title from the Secretary of State was not actually endorsed by Defendant and transferred over to Ms. Nichols until October 23, 2000, three days after the accident (see pg 2 of **Exhibit #3**). While Defendant, in its brief, tries to identify this as an odometer statement, it is the endorsement section for assignment of the title from seller to purchaser.

Ms. Nichols' testimony establishes that Defendant unequivocally could not have complied with the relevant statutes identifying proper transfer of title, and therefore transferred ownership of a vehicle. Specifically, Ms. Nichols, in her deposition testified to the following:

Q Do you understand that there's another document presented to me which is an Application for Michigan Title dated October 19th, did you see that?

A Yes.

Q Is it your testimony that those particular dates are false or inaccurate in that you never did sign it on that date, it was actually the 20th of October?

A Can I explain something?

Q You can explain anything you want. Go ahead.

A I went in on the 19th, it's dated the 19th, but it didn't really go through until the 20th. My approval didn't come through until the 20th.

Q Your approval for your loan is what we are talking about?

A Correct. So on the 20th I went in and signed these papers.

Q So you were at the dealership on October 20thg, the same day of this accident, is that correct?

A Yes

Q What time were you at the dealership?

A I would say between five and 5:30.
(See Exhibit #4)

The following dates, then, are the dates relevant to the issues in this lawsuit:

- October 20, 2000 - paperwork drafted and signed
- October 20, 2000 - accident occurs
- October 23, 2000 - Defendant endorses title to Ms. Nichols
- October 31, 2000 - Secretary of State issues new title

ARGUMENT

Standard of Review

Review of a trial court's decision on a motion for summary disposition is *de novo*.
Harrison v Olde Financial Corp, 225 Mich App 601; 572 NW 2d 679 (1997), *Stanton v City of Battle Creek*, 466 Mich 661; 647 NW 2d 508 (2002).

I. DEFENDANT OWNED THE SUBJECT VEHICLE WHEN THE ACCIDENT OCCURRED.

A. Applicable Statutes

MCL 257.240 The owner of a motor vehicle who has made a bona fide sale by transfer of his or her title or interest and who has delivered possession of the vehicle and the certificate of title thereto property endorsed to the purchaser or transferee shall not be liable for any damages or a violation of the law thereafter resulting from the use or ownership of the vehicle by another.

MCL 257.233(8) The owner shall endorse on the back of the certificate of title an assignment of title with the warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show payment or satisfaction of any security interest as shown on the original title.

MCL257.233(9) Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or the assignment of the certificate of title.

B. Analysis

Defendant's argument on the issue of ownership rests on two separate, but related factors: 'substantial compliance' and 'execution'. Essentially, Defendant argues that it properly 'executed' the documents for transfer of title, but if not, it 'substantially complied' with the requirements for transfer of title.

The basis of Defendant's argument is that the court of appeals' reliance on *Goins v Greenfield Jeep Eagle Inc*, 449 Mich 1; 534 NW2d 467 (1995) was misplaced because the *Goins* court's holding regarding execution was dicta and not binding.

Plaintiff asserts that Defendant's arguments are in direct contravention of *Goins* and cases prior to as well as subsequent to *Goins* that address these issues.

In *Goins*, the court was faced with the issue of ownership and held in part, the following:

It is important to stress, however, that ownership is not cast in stone. It can be transferred....These transfers become official when either the application for title has been executed or the actual certificate of title has been issued.

Upon the delivery of a motor vehicle and the transfer, sale or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or the certificate of title. [M.C.L. § 257.233(5); M.S.A. § 9.1933(5).]

While it is true that "[t]he mandates of the Michigan Vehicle Code must be followed and our Courts have been adamant in their refusal to sanction anything less than strict compliance," *Messer, supra* at 66, 183 N.W.2d 802, nowhere in the Vehicle Code is it required that a dealer verify the insurance coverage of a buyer or submit a copy of the purchaser's insurance coverage.

Hence, defendant's failure to follow this non-promulgated requirement within the informational manual did not prevent the transfer of ownership. This

conclusion is further reinforced by the fact that "the courts have been reluctant to find lesser defects, even those involving statutory violations, fatal to the transfer of ownership."... For example, ...a late filing of a certificate of title did not prevent the transfer of ownership ... fail[ure] to remove the license plates ...improper registration of a vehicle ...

Under § 37, the vehicle's registration does not implicate ownership. It is, in most instances, the transfer of title that signifies the transfer of vehicle ownership.... In other words, dealer compliance 472 with the registration provisions of the Vehicle Code is not a sine qua non for transfer of ownership.

While ownership was found to transfer in *Schomberg, Long, and Zechlin*, it has been found to not transfer in others. In *Gazdecki v. Cargill*, 28 Mich.App. 128, 131, 183 N.W.2d 805 (1970), the Court held that ownership did not transfer where a car had been sold and delivered, but no change in title had been filed.

In *Michigan Mut. Ins. Co. v. Reddig*, 129 Mich.App. 631, 635, 341 N.W.2d 847 (1983), the Court found that a sale of a motor vehicle without an accompanying certificate of title prevented a valid transfer of the vehicle.

Gazdecki, Basgall, and Reddig all demonstrate how important the transfer of title is to the transfer of ownership. Title transfers when there has been an "execution of either the application for title or the certificate of title." M.C.L. § 257.233(5); M.S.A. § 9.1933(5). In the present case, both occurred. The application for title was executed when defendant sent the necessary forms to the Secretary of State, and the certificate of title was executed when the Secretary of State issued a new certificate in the purchaser's name. Thus, if a failure to follow the Motor Vehicle Code in a situation like this would **not** prevent the transfer of ownership, then the failure to follow the instructional manual is not sufficient either. Title was transferred and defendant no longer remained liable as the owner of the vehicle.

There are several important rulings in *Goins* that negate Defendant's arguments.

First, the *Goins* court made it clear that while substantial compliance may in certain circumstances be sufficient, transfer of title itself requires **strict** statutory compliance.

Second, while Defendant deems the holding of *Goins* regarding execution to be dicta, Defendant misreads the holding.

The *Goins* court explained that there are two ways to transfer title - "title transfers when there has been an execution of either the application for title or the certificate of title". In *Goins*

the prior owner did *both* and the court merely explained that while either method was sufficient, the prior owner followed the statutory requirements for both methods.

Regarding execution of the application, which is the issue in this case, the prior owner followed the statutory requirement of sending the forms to the secretary of state.

Both of the holdings of *Goins* (strict compliance and execution) were affirmed in *Ladd v Ford Consumer Finance Company, Inc.*, 217 Mich App 119, NW 2d 826 (1996), where the court was faced with the issue of transfer of title to a mobile home. The court held the following:

No Michigan case has considered this precise question. However, this Court has considered similar issues involving the transfer of title to automobiles and watercraft and held that the title transfer provisions of the watercraft certificates of title act (WCTA) and the Michigan Vehicle Code (MVC) preempt the UCC. *Jerry v. Second Nat'l Bank of Saginaw*, 208 Mich.App. 87, 527 N.W.2d 788 (1994); *Whitcraft v. Wolfe*, 148 Mich.App. 40, 384 N.W.2d 400 (1985); *Messer v. Averill*, 28 Mich.App. 62, 183 N.W.2d 802 (1970). *Whitcraft*, supra at 50, 384 N.W.2d 400, applied the principle that a specific and particular act governs over a general act when the acts are contemporaneous and involve the same subject matter. The Court concluded that the MVC specifically governs the transfer of title to motor vehicles, and that the general title transfer provisions of the UCC, M.C.L. § 440.2401 (2); M.S.A. § 19.2401(2), did not.

The MHCA's provisions, although different in some respects, are analogous to the title transfer sections of the MVC and the WCTA. Applying *Whitcraft*, *Messer*, and *Jerry*, we conclude that the specific certificate of title provisions of the MHCA control over the general provisions of the UCC. The MVC, the WCTA, and the MHCA are more than mere recording devices; all three acts reflect the Legislature's intent that **strict statutory compliance is essential to transfer ownership**.

Under an identical provision of the MVC concerning the time when title to a motor vehicle transfers, M.C.L. § 257.233(5); M.S.A. § 9.1933(5), **execution of an application for certificate of title occurs when the application is sent with the necessary forms to the Secretary of State**. *Goins v. Greenfield Jeep Eagle, Inc.*, 449 Mich. 1, 14, 534 N.W.2d 467 (1995). (emphasis added)

The *Ladd* court unequivocally held that when transferring title, strict statutory compliance is required and that execution occurs when the application for title is delivered to the secretary

of state.

In cases that predate *Goins*, the courts have used the same principles. In *Zechlin v Bridge Motor Sales*, 190 Mich App 339; 475 NW 2d 60 (1991), the following facts were before the court:

Defendant Sharon Saylor purchased a 1983 Buick automobile from defendant Bridges Motor Sales on August 23, 1988.

Bridges applied to the Secretary of State for a transfer of the title, but did not attempt to secure a new registration plate or a certificate of registration for the Buick.

The application for Michigan title was received by the Secretary of State on September 6, 1988.

On September 30, 1988, Saylor and the Buick were involved in an automobile accident.

On these facts, the court held:

We do not agree with plaintiff that the sale was voided by Bridges' violation of the Vehicle Code. While it is true, as plaintiff argues, that **transfer of the title of an automobile usually cannot be effectuated without compliance with the mandates of the Vehicle Code**, see *Messer v. Averill*, 28 Mich.App. 62, 66, 183 N.W.2d 802 (1970), it is equally evident that **those mandates concern the transfer of title**, not registration.

Finally, we address whether the court properly determined that Bridges' ownership interest in the Buick terminated before the accident. We agree with the trial court that it did.

M.C.L. § 257.233(5); M.S.A. § 9.1933(5) provides that the effective date of transfer of title or interest in a motor vehicle is the date of execution of either the application for title or the certificate of title. Here, Bridges **filed the application** for title on September 6, 1988, several weeks before the accident that occurred on September 30, 1988. The trial court did not err in granting summary disposition in favor of Bridges.
(emphasis added)

In *Messer v Averill*, 28 Mich App 62; 183 NW 2d 802 (1970), the court also ruled on this issue. In *Messer*, the court looked at these facts:

On June 8, 1966, defendant Averill sought to purchase a used car from defendant DeRidder, doing business as Quality Used Cars. Arrangements were made with defendant DeRidder and his agent, George Dewey, whereby Averill

traded his previous car to DeRidder as a down payment on the car. Additionally, DeRidder undertook to arrange automobile financing on Averill's behalf. DeRidder's efforts to obtain credit for Averill were generally unsuccessful for eight days subsequent to the alleged 'sale.'

On June 17, 1966, defendant Averill was involved in an auto accident with plaintiffs while driving the car obtained from DeRidder. Subsequent to being informed of this accident, DeRidder accepted financing from a bank whose terms he had earlier rejected. Once the financing was arranged, the application for new title was made to the Secretary of State, on June 18, 1966.

The court ruled as follows:

For purposes of our analysis, we shall assume defendant DeRidder's allegations are true. He asserts that prior to the accident, several events had transpired which constituted a transfer of ownership, pursuant to the Michigan Vehicle Code: (1) the subject automobile was sold and delivered to Averill; (2) a statement of sale of a motor vehicle and application for Michigan certificate of title for the automobile were completed and executed by Averill in the presence of a notary public, who certified Averill's signatures; (3) temporary registration permit was completed for the automobile and was delivered to Averill; (4) Averill executed the transfer of title form for his trade-in automobile; (5) a 'registered dealer form' was completed for the reassignment of title of the subject automobile to Averill, was executed by DeRidder before a notary public, who certified DeRidder's signature. It is defendant DeRidder's claim that the sum total of his actions prior to June 17 was sufficient to constitute a transfer of ownership according to law. In any event, he argues, the application for title, one day subsequent to the accident, makes legal ownership pass, retroactive to the day of the alleged agreement for transfer.

The word 'owner' under the vehicle code obviously is not used in the sense of referring to persons whose title is good against all others, and under the code there may be several such owners. One or more persons may be liable as owners even though none of such owners possess all the normal incidents of ownership.

Inasmuch as it is undisputed that the dealer herein **had not**, at the time of the accident, **complied with the statute providing for transfer of ownership**, he is deemed an owner under the statute.

The mandates of the Michigan Vehicle Code must be followed and our courts have been adamant in their refusal to sanction anything less than **strict compliance**.
(emphasis added)

In *Messer*, the dealership claimed to have done more than Defendant claims to have done in this case, but the court made it clear that since the dealership had not applied to the secretary

of state for transfer of title before the accident, the dealership was an owner of the subject vehicle. Moreover, the court held that strict compliance is the standard for transfer of title.

There is a thirty five year history of cases that consistently hold that strict compliance is the standard for transfer of title and that application to the secretary of state is required to transfer title.

Regarding the assignment of title, the date of the endorsement is October 23, 2000, three days after the accident.

MCL 257.233 (8) states that assignment of title occurs when endorsement of the title takes place and the certificate is delivered by mail or in person to the purchaser.

MCL 257.240 identifies the owner until the delivery of vehicle and assignment of title occurs.

In this case, Ms. Nichols completed the paperwork on October, 20, 2000 at about 5:30 pm and left the dealership.

Later on October 20, 2000, the subject accident occurred.

On October 23, 2000, Defendant endorsed the title to Ms. Nichols.

On October 31, 2000, the Secretary of State issued title of this vehicle to Ms. Nichols.

In order for a transfer of title to take place in this case, either the assignment of title or the application for title was required to be executed on or before October 20, 2000 and neither of those requirements were met.

While Plaintiff asserts that Defendant was the owner of *the* subject vehicle, there may be several owners of a motor vehicle within the meaning of the Michigan Vehicle Code, with no one owner possessing "all the normal incidents of ownership." *Messer v Averill*, 28 MichApp 62; 183 NW2d 802, *supra* and therefore, on the date of the accident, Defendant was at least *an* owner of

the subject vehicle.

II. PLAINTIFF'S RELEASE OF THE DRIVER DID NOT RELEASE DEFENDANT.

Both the circuit court and court of appeals properly ruled that the release of Ms. Nichols did not operate as a release of Defendant.

Defendant relies primarily on *Geib v Slater*, 320 Mich 316; 31 NW2d 65 (1948) and *Theophelis v. Lansing General Hosp.*, 430 Mich 473, 424 NW2d 478 (1988), in support of its position.

In *Geib*, the court held that the liability of the owner of a motor vehicle for damages caused by the negligent operation thereof by another person, rests upon the doctrine of agency, express or implied. The liability is based upon the doctrine of respondeat superior.

Subsequently, in *Moore v Palmer*, 350 Mich 363; 86 NW 2d 585 (1957), the court ruled on this issue:

The statute carries within it its own test as to owner liability: Whether 'said motor vehicle is being driven with his or her express or implied consent or knowledge.' C.L.S.1954, § 257.401 (Stat.Ann.1952 Rev. § 9.2101). These were the very words which the trial judge employed in our present cases and which are the subject of appellants' complaint. We hold that they were correctly employed.

Further to attempt some clarification of the long and confusing history we have recited, we hold that the language referred to in *Geib v. Slater*, supra, and *Riser v. Riser*, supra, holding the Michigan owner liability act to be based upon the doctrine of *respondeat superior* is expressly overruled.

The *Moore* court expressly overruled the holding in *Geib* and held that the owner's liability statute carried its own test for liability, namely, whether the vehicle was being driven with the owner's consent.

In *Smith v Childs*, 198 Mich App 94, 497 NW 2d 538 (1993), the court reviewed both *Geib* and *Theophelis*:

Under the common law, release of an agent acted to discharge a vicariously liable principal, and release of the principal discharged the agent. *Geib v. Slater*, 320 Mich. 316, 321, 31 N.W.2d 65 (1948). Plaintiff released Farm Bureau Life from *all* liability, not just liability premised on a breach of contract. Thus, under the common law, if plaintiff could have claimed against Farm Bureau Life under the doctrine of respondeat superior for the negligence of Childs, then plaintiff's release of that liability would have discharged Childs' liability as well.

Our statutes provide that a release of one of two or more persons liable in tort for the same injury does not discharge "any of the other tort-feasors from liability" unless the release says it does. M.C.L. § 600.2925d; M.S.A. § 27A.2925(4). In *Theophelis v. Lansing General Hosp.*, 430 Mich. 473, 424 N.W.2d 478 (1988), our Supreme Court struggled with the effect the enactment of the statute had on the common-law rule. The Court found that, because a vicariously liable principal is not a tortfeasor, *id.* at 483, 424 N.W.2d 478, as that term is used in the statute, the statute did not abrogate the common-law rule that release of an agent discharged the principal. *Id.* at 491, 493, 424 N.W.2d 478; see also *Felsner v. McDonald Rent-A-Car, Inc.*, 193 Mich.App. 565, 484 N.W.2d 408 (1992). The Court concluded that "[a]ny other result would be illogical and unjust because release of the agent removes the only basis for imputing liability to the principal." *Theophelis*, *supra*, 430 Mich. at 491, 424 N.W.2d 478. However, it is equally true that the liability of the agent is not dependent upon the agent's relationship to the principal but is attributable to his own misconduct. We conclude that enactment of the statute did abrogate the common-law rule that release of the principal discharged the liability of the agent. By the plain wording of the statute, if the principal obtains a release, that release does not discharge any other tortfeasor, including its agent, from liability unless the release says it does. M.C.L. § 600.2925d(a); M.S.A. § 27A.2925(4)(a).

The *Smith* court clearly held that the release of Ms. Nichols did not operate as a release as to Defendant.

Finally, in *Poch v Anderson*, 229 Mich App 40; 580 NW2d 456 (1998), the case cited by the court of appeals in its Opinion, the court held:

The purpose of this statute is to place the risk of damage or injury on the person who has the ultimate control of the motor vehicle as well as the person in immediate control. *North v. Kolomyjec*, 199 Mich.App. 724, 726, 502 N.W.2d 765 (1993). The owner's liability under the statute is nonderivative. *Wilson v. Al-Huribi*, 55 Mich.App. 95, 98, 222 N.W.2d 49 (1974). To subject an owner to liability under the statute, an injured person need only prove that the defendant is the owner of the vehicle and that it was being operated with the defendant's knowledge or consent. *North*, *supra* at 726-727, 502 N.W.2d 765.

As the courts have held, Defendant's reliance on general master/servant principles is inapposite because the owner's liability statute specifically defines the owner's liability under the context of the statute.

CONCLUSION/RELIEF REQUESTED

Defendant owned the subject vehicle and Plaintiff's release of Ms. Nichols did not release Defendant.

Plaintiff respectfully requests that the court of appeals ruling be affirmed.

Dated: December 9, 2005

Respectfully Submitted,

SCOTT R. TRAVER (P53842)
Attorney for Plaintiff

BARNETT & TRAVER, P.C., ATTORNEYS AT LAW, 3520 PONTIAC LAKE ROAD, WATERFORD, MICHIGAN 48328, (248) 673-1099